



Issue Date: 26 June 2008

*In the Matter of*  
**Donald Thomason**  
Complainant

v.

Case Number 2008 STA 00054

**W.T. Contractors, LLC**  
Respondent

## **RECOMMENDED DECISION AND ORDER**

### **RE: COMPLAINANT'S REQUEST TO WITHDRAW**

This matter arises under the employee protection provisions of section 405 of the Surface and Transportation Assistance Act of 1982, 49 U.S.C. § 31105 (hereinafter the "STAA"), with its implementing regulations found at 29 C.F.R. Part 1978.

The Complaint in this matter was issued May 18, 2008. On June 19, 2008, the Complainant requested a withdrawal. The Respondent has no objection.

The regulations do not permit withdrawal of a complaint. They only allow withdrawal of objections to the Secretary's preliminary findings. 29 C.F.R. § 1978.111(c). Thus, the proper procedure in this circumstance is to construe the Complainant's request to withdraw his complaint as a withdrawal of objections to the Secretary preliminary findings. *Mysinger v. Rent-A-Driver*, 90-STA-23 (Sec'y Sept. 21, 1990). When such withdrawal occurs, an order affirming "any portion of the findings or preliminary order with respect to which the objection was withdrawn" must be issued. 29 C.F.R. § 1978.111(c). If the case is before OALJ, my order becomes the final administrative order in the case. *Shown v. Wilson Truck Corp.*, 92-STA-6 (Sec'y Apr. 30, 1992). Consequentially, I reinstate and affirm the Secretary's preliminary findings. Accordingly,

## ORDER

IT IS HEREBY ORDERED that:

1. Pursuant to 29 C.F.R § 1978.111(c), the Secretary's findings are **REINSTATED** and **AFFIRMED**.
2. The above-captioned claim is **DISMISSED** without prejudice.
3. The hearing is **CANCELLED**.

A

DANIEL F. SOLOMON  
Administrative Law Judge

NOTICE OF REVIEW: The Recommended Order Approving Withdrawal of Objections and Dismissing Claim, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. See 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, ¶4.c.(35), 67 Fed. Reg. 64272 (2002).

Within thirty (30) days of the date of issuance of the administrative law judge's Recommended Order Approving Withdrawal of Objections and Dismissing Claim, the parties may file briefs with the Administrative Review Board ("Board") in support of, or in opposition to, the administrative law judge's order unless the Board, upon notice to the parties, establishes a different briefing schedule. See 29 C.F.R. § 1978.109(c)(2). All further inquiries and correspondence in this matter should be directed to the Board.